fitness for this additional task. The advantages of codification are debatable; but once the policy is adopted, no one can question that the preparation of a code should be intrusted, as a prerequisite for its satisfactory accomplishment, to those who have a thorough familiarity with the principles and theory of the particular branch of the common law to be codified, and a specialist's knowledge of its details. Incidentally, but not so imperatively, an acquaintance with the defects and merits of existing codes is desirable. In the present case, to throw the burden of drafting a revised code of procedure on the shoulders of the commissioners — confessedly not specialists in the law of civil procedure, and already behindhand in their work of revising the statutes — is probably to repeat the history of 1877, when a similar commission of statutory revision was required to revise the procedure code. The result was that the revision of the statutes was never completed; while the procedure code is so defective and ill drawn that, rather than practise longer under it, the bar of the State now welcome the uncertainties of a new revision. It is only fair to add that the report, which the commissioners must submit December next, of the results of their examination of other codes and rules of procedure may reveal unexpected and unhoped for qualifications for the task assigned them.

THE RULE IN DEARLE *v.* HALL.— An assignee of a *cestui's* interest in a trust fund, will, if the trustee have no notice of the assigment, be postponed to a subsequent assignee who gives notice. This, it will be remembered, is, in a word, the doctrine known to English lawyers as the rule in *Dearle* v. *Hall* (3 Russ. 1). The confusion which it has worked and is continuing to work in the English law of trusts is well pointed out by Mr. E. C. C. Firth in an article in the October number of the Law Quarterly Review. That the rule is devoid of principle in all cases where the second assignee makes no inquiries of the trustee, and so is not mislead by the first assignee's neglect, has often been said and seems clear enough. Whether it is consonant to principle where the second assignee does make inquiries, and takes his assignment in reliance on the trustee's ignorance of the prior assignment, is a question on which there is likely to be a difference of opinion. Mr. Firth denies the right of the second assignee even in this case, on the ground that the first owes him no duty and so is not guilty of negligence in omitting to give notice. Accordingly there can be no estoppel by negligence. It would seem, however, that a duty to give notice might very well be contended for, where a probable consequence of taking the assignment without notice is that some one will be defrauded.

The question is, of course, no longer an open one in England, where, by a series of decisions, the rule has been "improved" until now it has nothing to do with the merits of the successive assignees. *Foster* v. *Cockerell* (3 Cl. & F. 456) decided that it was immaterial that the second assignee made no inquiries of the trustee; *Low* v. *Bouverie* (1891, 3 Ch. 82) that the trustees were not bound to answer inquiries if they were made; *Lloyd* v. *Banks* (3 Ch. 488) that the first assignee should be preferred although he neglected to give notice, if the trustees happened by accident to hear of the assignment. Thus, in all cases where the second assignee gives notice, it has come to be essential for the trustee

to have a bit of information which he is not bound to impart to anybody which the first assignee is not bound to give him, and which the second is not bound to trouble himself about.

It is certainly not to be regretted that a rule so purely artificial and technical has, in many American jurisdictions, failed to gain a foothold. See the cases collected in Ames, Cases on Trusts, 2d ed., 326–328; and see also 7 HARVARD LAW REVIEW. 305.

SHALL A NEGLIGENT PARENT RECOVER FOR A CHILD'S DEATH? — Though the authorities are still in conflict, it seems clear on principle that, where an infant sues for injuries caused by the defendant's negligence, the contributory negligence of his custodian should not be imputed to him so as to defeat his action. In jurisdictions where this doctrine is accepted a more difficult question arises. When a child is killed through the combined negligence of his parent and the defendant, and the parent, as administrator, brings action for the death of the child, being himself the sole beneficiary in case of recovery, is his contributory negligence a good defence? The courts which have been called upon to answer this question are pretty evenly divided in their answers. In the recent case of *Bamberger* v. *Citizens' St. R. Co.* (31 S.W. Rep. 163) the Tennessee court discusses the subject thoroughly, and comes to the conclusion that in such a case the parent's contributory negligence is a good defence to the action. *Wymore* v. *Mahaska County* (78 Iowa, 396) presents the opposite view. (See Tiffany on Death by Wrongful Act, §§ 69–71, for a full discussion of the subject.)

On the one hand it is urged that the action is purely in the right of the child, — his estate in fact is suing, and it should consequently recover whenever the child himself could have recovered had his injuries not proved fatal. At first sight this seems the strictly logical view. On the other hand, it must be remembered that the right of the administrator to bring this action is not a common law right, but is purely statutory. The statutes, of which every State has one, are copied more or less closely from Lord Campbell's Act, and ordinarily provide, in substance, that where the deceased could have recovered if he had lived, his administrator can recover for the benefit of the next of kin; and the courts which support the view taken in the Tennessee case add the qualification that, as the next of kin is the real party in interest, he must have been free from fault himself in order to reap the benefit provided for by the statute. This works justice, but is it reading too much into the statute? It hardly seems so. It is by no means uncommon in statutory actions for damages for courts to hold that contributory negligence is a good defence, though not mentioned in the statute. (*See Quimby* v. *Woodbury*, 63 N. H. 370.) And in the case under discussion it would apparently do no violence to the intention of the legislature to interpret the statute as not merely providing for the survival of the child's right of action, but as giving the next of kin a new right of a special nature, the enforcement of which is conditioned on freedom from contributory negligence. This interpretation supports Mr. Tiffany's conclusion that the right of the deceased to maintain an action is not the sole test of the right of the beneficiaries to recover damages for his death, but merely one of the conditions of their right.